

## § 418.3330

your living-with spouse if he or she receives a social security disability insurance benefit based on blindness and is under age 65.

### § 418.3330 What is unearned income?

Unearned income is all income that is not earned income. We describe some of the types of unearned income we count in § 418.3335.

### § 418.3335 What types of unearned income do we count?

(a) Some of the types of unearned income we count are described in § 416.1121(a) through (g) of this chapter.

(b) For claims filed before January 1, 2010, and redeterminations that are effective before January 1, 2010, we also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter given to you or that you receive because someone else pays for it.

[70 FR 77675, Dec. 30, 2005, as amended at 75 FR 81845, Dec. 29, 2010]

### § 418.3340 How do we count your unearned income?

(a) *When income is received.* We count unearned income as available to you at the earliest of the following points: when you receive it, when it is credited to your account, or when it is set aside for your use.

(b) *When income is counted.* For purposes of determining eligibility and whether you should receive a full or partial subsidy, we consider all of the countable unearned income you and your living-with spouse receive (or expect to receive) during the year for which we are determining your eligibility for this benefit. However, in the first year you or your spouse apply for the subsidy, we consider all of the countable unearned income both you and your living-with spouse receive (or expect to receive) starting in the month for which we determine eligibility for you or your living-with spouse based on an application for the subsidy. If we count your income for only a portion of the year, the income limits for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy

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eligibility will be half of the income limit applicable for the full year.

(c) *Amount considered as income.* We may include more or less of your income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a social security benefit) has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare premiums.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program, we subtract legal fees connected with the claim. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.